UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/734
21 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 734

Case No. 787: ISLAM

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 30 April 1994, Md. Matiul Islam, a former staff member of the United Nations Industrial Development Organization, hereinafter referred to as UNIDO, filed an application requesting the Tribunal:

> "To rescind the decision of the Standing Committee [of the United Nations Joint Staff Pension Board] that the Applicant's review petition was time-barred and direct the Committee to consider the review petition on its merits."

Whereas the Respondent filed his answer on 30 March 1995;

Whereas the Applicant filed written observations on 28 April 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 January 1982, as a staff member of UNIDO. He separated from UNIDO on 30 June 1987. He opted for an early retirement benefit which commenced to be paid, with effect from 1 August 1987.

The Applicant re-entered the service of the United Nations on 13 September 1987, as a staff member of the United Nations Development Programme (UNDP), and again became a participant in the United Nations Joint Staff Pension Fund (the Pension Fund) as of that date. On the same date, the Pension Fund suspended payment of his early retirement benefit. The Applicant served in UNDP until 31 December 1990. With effect from 1 January 1991, the Applicant re-entered the service of UNIDO, until 28 February 1993, when he retired.

In a letter dated 18 May 1988, the Applicant sought advice from the Secretary of the UN Joint Staff Pension Board (UNJSPB) as to whether he could cover the break in his service from 1 July to 12 September 1987, for pension purposes. In a reply, dated 14 July 1988, the Secretary of the UNJSPB advised the Applicant, "there is no provision in the Pension Fund Regulations and Rules which would enable you to contribute for a period while not in the employ of a member organization of the Fund." The Secretary further advised the Applicant that his two periods of service could not be linked "because, although you re-joined the Fund within one year after your separation you were paid a benefit and your contributory service was not less than five years."

In a facsimile dated 4 January 1993, to the Secretary of the UNJSPB, the Applicant recalled the exchange of correspondence in 1988, regarding his request to link his two periods of service, and noted "I did not take up the matter so long as I did not have time, due to extreme pre-occupation of my assignment, to study the pension rules in depth. Now that my retirement is due on 28 February 1993, I am taking up the matter again for a review." The Applicant noted that his separation was less than twelve months, as required, and that he had been disqualified as a result of having been paid one month's pension prior to resuming service. He appealed to the UN

Joint Staff Pension Committee to condone the "minor technical violation" of the rules "by allowing [him] to refund ... the benefit drawn with full interest to revert to the position of status quo ante."

In a further facsimile dated 15 January 1993, the Applicant requested that his case be reviewed by the Standing Committee of the UNJSPB or that he be advised of an appropriate alternative forum for his appeal. In a reply dated 25 January 1993, the Secretary of the UNJSPB advised the Applicant "Neither the Standing Committee of the Pension Board, nor any other entity, has the discretion to authorize the determination and payment of benefits from the Pension Fund other than in strict conformity with its statutory Regulations and Rules."

In a letter dated 15 February 1993, the Applicant submitted an appeal to the Standing Committee, requesting authorization for an exception or an amendment of the rules to delete the condition that no benefit has been received, as a result of prior service, before the resumption of contributory service.

In a letter dated 30 September 1993, the Secretary of the UNJSPB informed the Applicant as follows:

> "At its 175th meeting, held on 29 and 30 June 1993, the Standing Committee noted that, after your re-entry into Fund participation on 13 September 1987, you had soon inquired about the possible applicability of article 21(b) so as to link your periods of UNJSPF contributory service. However, after receiving a negative response from the Secretary of the Board in July 1988, you waited until January 1993 to challenge the Secretary's decision. For that reason the Standing Committee concluded that your request for review was time-barred and therefore was not receivable. It may be added that, in accordance with Rule K.5 in the Fund's Administrative Rules, any request for review should normally be submitted 'within 90 days of receipt of notification of the disputed decision.'"

On 30 April 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant's letter of 18 May 1988 was an inquiry, and the response was a clarification and not a decision. His request dates to his letter of 4 January 1993, and the reply of 25 January 1993 was the decision made on the request. His appeal is therefore not time-barred.

Whereas the Respondent's principal contention is:

The Respondent's reply of 14 July 1988 to the Applicant's request of 18 May 1988, regarding his pension rights, was a decision which the Applicant attempted to re-open in his request of 4 January 1993. His appeal is therefore time-barred.

The Tribunal, having deliberated from 30 October to 21 November 1995, now pronounces the following judgement:

I. The Applicant requests the Tribunal to overturn the decision of the Standing Committee of the UN Joint Staff Pension Board (UNJSPB), communicated to him on 30 September 1993, whereby his request for linking his two periods of service was denied, on the ground that it was time-barred. The view of the Committee was that the Applicant's claim had already been rejected by the Secretary of the UNJSPB on 14 July 1988, in response to the Applicant's letter of 18 May 1988, and that the Applicant requested review only in January 1993. This request was, therefore, time-barred.

II. The Applicant contends that he had never submitted any claim in 1988. His letter of 18 May 1988 to the Secretary of the UNJSPB

was aimed at obtaining advice and could not have led to any administrative decision. The Applicant's view is that his formal claim was only submitted on 4 January 1993 and rejected by the Secretary of the UNJSPB on January 25th. This decision was appealed by the Applicant on 15 February and, on 25 February, the Applicant was informed by the Secretariat of the Pension Fund that his appeal would be considered by the Standing Committee, on the basis of his letters of 4 January and 15 February.

III. In considering this appeal, the Standing Committee concluded that there had been a previous administrative decision on the matter in 1988 and that the Applicant had failed to challenge it, thus forfeiting his rights to do so in respect of the subsequent decision by the Secretary of the UNJSPB of 25 January 1993.

The Applicant has limited his claim in the present instance to the specific point of whether the Standing Committee acted correctly when deciding that his claim was time-barred.

Therefore, this will be the only issue that the Tribunal shall consider. The Tribunal shall not consider the merits of the case in this instance.

IV. The crucial point to be decided by the Tribunal is whether the 14 July 1988 reply from the Secretary of the UNJSPB is an administrative decision that should have been timely appealed by the Applicant in order to protect his rights.

In this respect, the Tribunal observes that the wording of the Applicant's letter of 18 May 1988 clearly shows that, at the time, the Applicant was only seeking advice from the Pension Fund and not a decision. Thus the second paragraph of the letter says: "I am taking this opportunity to seek your advice ...", and the third paragraph reads: "I would like to get your advice ..."

The Secretary of the UNJSPB replied to this request for advice on 14 July 1988 in a negative way. This reply was viewed by the Standing Committee, in January 1993, as a negative answer to a formal request.

V. The Tribunal does not share this view. It is the opinion of the Tribunal that the Applicant acted reasonably when considering that the Respondent's reply of 14 July 1988 was of the same nature as his request. There was no reason for the Applicant to suppose that the Respondent's reply went beyond his request for advice and constituted an administrative decision that would require him to appeal within the statutory time limits. It is also the opinion of the Tribunal that, inasmuch as the 14 July 1988 reply from the Pension Fund gives rise to doubt as to whether it constitutes an administrative decision, it should not be used to reject an appeal on the grounds of timeliness.

VI. For the above mentioned reasons, the Tribunal finds that the Applicant's failure to institute a recourse procedure against the Pension Fund, pursuant to the Pension Fund's reply to his 18 May letter, has not impaired his right to appeal against any subsequent decision on the matter.

Therefore, the Tribunal rules that the appeal submitted by the Applicant on 15 February 1993, against the decision of the Secretary of the UNJSPB dated 25 January 1993, is not time-barred and should be considered by the UNJSPB on its merits.

VII. For the foregoing reasons, the Tribunal remands the case to the UNJSPB for consideration on the merits.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary